

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY APRIL 7, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 469

Introduced by Assembly Member Swanson
(Coauthor: Assembly Member Huffman)

February 15, 2011

An act to amend Sections 98, 226, 240, 243, and 1174 of, and to add Sections 1194.3, 1197.2, 1206, and 2811 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 469, as amended, Swanson. Employees: wages.

(1) Existing law authorizes the Labor Commissioner to investigate and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Existing law provides for criminal and civil penalties for violations of statutes and orders of the commission regarding payment of wages.

This bill would make it a ~~felony~~ *misdemeanor* if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order from the Labor Commissioner for wages due, ~~and the total amount of unpaid wages is more than \$1,000.~~

(2) Existing law permits the Labor Commissioner to require an employer who has been convicted of a subsequent wage violation or who has failed to satisfy a judgment to post a bond in order to continue business operations.

This bill would extend the time required for a subsequently convicted employer to maintain a bond from 6 months to 2 years and would require that a subsequently convicted employer provide an accounting of assets, as specified, to the Labor Commissioner.

(3) Existing law requires an employer to post specified wage and hour information in a location where it can be viewed by employees.

This bill would require an employer to provide each employee, at the time of hiring, with a notice ~~in English and in the employee's primary language~~ that specifies the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages. *No notice would be required for an employee who is employed by the state or any subdivision thereof, exempt from the payment of overtime, or covered by a collective bargaining agreement containing specified information.*

(4) In addition to the crime and employer obligations imposed by this bill, the Labor Code provides for other work-related standards and duties that, upon violation, are subject to specified penalties.

This bill would state that the Labor Code establishes minimum penalties for failure to comply with wage-related statutes and regulations.

Because this bill would create a new crime or expand the definition of a crime, it would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Wage Theft Prevention Act of 2011.
- 3 SEC. 2. Section 98 of the Labor Code is amended to read:
- 4 98. (a) The Labor Commissioner is authorized to investigate
- 5 employee complaints. The Labor Commissioner may provide for

1 a hearing in any action to recover wages, penalties, and other
2 demands for compensation properly before the division or the
3 Labor Commissioner, including orders of the Industrial Welfare
4 Commission, and shall determine all matters arising under his or
5 her jurisdiction. It is within the jurisdiction of the Labor
6 Commissioner to accept and determine claims from holders of
7 payroll checks or payroll drafts returned unpaid because of
8 insufficient funds, if, after a diligent search, the holder is unable
9 to return the dishonored check or draft to the payee and recover
10 the sums paid out. Within 30 days of the filing of the complaint,
11 the Labor Commissioner shall notify the parties as to whether a
12 hearing will be held, whether action will be taken in accordance
13 with Section 98.3, or whether no further action will be taken on
14 the complaint. If the determination is made by the Labor
15 Commissioner to hold a hearing, the hearing shall be held within
16 90 days of the date of that determination. However, the Labor
17 Commissioner may postpone or grant additional time before setting
18 a hearing if the Labor Commissioner finds that it would lead to an
19 equitable and just resolution of the dispute. A party who has
20 received actual notice of a claim before the Labor Commissioner
21 shall, while the matter is before the Labor Commissioner, notify
22 the Labor Commissioner in writing of any change in that party's
23 business or personal address within 10 days after the change in
24 address occurs.

25 It is the intent of the Legislature that hearings held pursuant to
26 this section be conducted in an informal setting preserving the
27 rights of the parties.

28 (b) When a hearing is set, a copy of the complaint, which shall
29 include the amount of compensation requested, together with a
30 notice of time and place of the hearing, shall be served on all
31 parties, personally or by certified mail, or in the manner specified
32 in Section 415.20 of the Code of Civil Procedure.

33 (c) Within 10 days after service of the notice and the complaint,
34 a defendant may file an answer with the Labor Commissioner in
35 any form as the Labor Commissioner may prescribe, setting forth
36 the particulars in which the complaint is inaccurate or incomplete
37 and the facts upon which the defendant intends to rely.

38 (d) No pleading other than the complaint and answer of the
39 defendant or defendants shall be required. Both shall be in writing

1 and shall conform to the form and the rules of practice and
2 procedure adopted by the Labor Commissioner.

3 (e) Evidence on matters not pleaded in the answer shall be
4 allowed only on terms and conditions the Labor Commissioner
5 shall impose. In all these cases, the claimant shall be entitled to a
6 continuance for purposes of review of the new evidence.

7 (f) If the defendant fails to appear or answer within the time
8 allowed under this chapter, no default shall be taken against him
9 or her, but the Labor Commissioner shall hear the evidence offered
10 and shall issue an order, decision, or award in accordance with the
11 evidence. A defendant failing to appear or answer, or subsequently
12 contending to be aggrieved in any manner by want of notice of the
13 pendency of the proceedings, may apply to the Labor
14 Commissioner for relief in accordance with Section 473 of the
15 Code of Civil Procedure. The Labor Commissioner may afford
16 this relief. No right to relief, including the claim that the findings
17 or award of the Labor Commissioner or judgment entered thereon
18 are void upon their face, shall accrue to the defendant in any court
19 unless prior application is made to the Labor Commissioner in
20 accordance with this chapter.

21 (g) All hearings conducted pursuant to this chapter are governed
22 by the division and by the rules of practice and procedure adopted
23 by the Labor Commissioner.

24 (h) (1) Whenever a claim is filed under this chapter against a
25 person operating or doing business under a fictitious business
26 name, as defined in Section 17900 of the Business and Professions
27 Code, which relates to the person's business, the division shall
28 inquire at the time of the hearing whether the name of the person
29 is the legal name under which the business or person has been
30 licensed, registered, incorporated, or otherwise authorized to do
31 business.

32 (2) The division may amend an order, decision, or award to
33 conform to the legal name of the business or the person who is the
34 defendant to a wage claim, if it can be shown that proper service
35 was made on the defendant or his or her agent, unless a judgment
36 had been entered on the order, decision, or award pursuant to
37 subdivision (d) of Section 98.2. The Labor Commissioner may
38 apply to the clerk of the superior court to amend a judgment that
39 has been issued pursuant to a final order, decision, or award to

1 conform to the legal name of the defendant, if it can be shown that
2 proper service was made on the defendant or his or her agent.

3 SEC. 3. Section 226 of the Labor Code is amended to read:

4 226. (a) Every employer shall, semimonthly or at the time of
5 each payment of wages, furnish each of his or her employees,
6 either as a detachable part of the check, draft, or voucher paying
7 the employee's wages, or separately when wages are paid by
8 personal check or cash, an accurate itemized statement in writing
9 showing (1) gross wages earned, (2) total hours worked by the
10 employee, except for any employee whose compensation is solely
11 based on a salary and who is exempt from payment of overtime
12 under subdivision (a) of Section 515 or any applicable order of
13 the Industrial Welfare Commission, (3) the number of piece-rate
14 units earned and any applicable piece rate if the employee is paid
15 on a piece-rate basis, (4) all deductions, provided that all deductions
16 made on written orders of the employee may be aggregated and
17 shown as one item, (5) net wages earned, (6) the inclusive dates
18 of the period for which the employee is paid, (7) the name of the
19 employee and his or her social security number, except that by
20 January 1, 2008, only the last four digits of his or her social security
21 number or an employee identification number other than a social
22 security number may be shown on the itemized statement, (8) the
23 name and address of the legal entity that is the employer, and (9)
24 all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the
26 employee. The deductions made from payments of wages shall be
27 recorded in ink or other indelible form, properly dated, showing
28 the month, day, and year, and a copy of the statement and the
29 record of the deductions shall be kept on file by the employer for
30 at least three years at the place of employment or at a central
31 location within the State of California.

32 (b) An employer that is required by this code or any regulation
33 adopted pursuant to this code to keep the information required by
34 subdivision (a) shall afford current and former employees the right
35 to inspect or copy the records pertaining to that current or former
36 employee, upon reasonable request to the employer. The employer
37 may take reasonable steps to ensure the identity of a current or
38 former employee. If the employer provides copies of the records,
39 the actual cost of reproduction may be charged to the current or
40 former employee.

(c) An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.

(d) This section does not apply to any employer of any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(f) A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.

(g) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

(h) This section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity, except that if the state or a city, county, city and county, district, or other governmental entity furnishes its employees with a check, draft, or voucher paying the employee's wages, the state or a city, county, city and county, district, or other governmental entity shall, by January 1, 2008, use no more than the last four digits of the employee's social security number or shall use an employee

1 identification number other than the social security number on the
2 itemized statement provided with the check, draft, or voucher.

3 SEC. 4. Section 240 of the Labor Code is amended to read:

4 240. (a) If any employer has been convicted of a violation of
5 any provision of this article, or if any judgment against an employer
6 for nonpayment of wages remains unsatisfied for a period of 10
7 days after the time to appeal therefrom has expired, and no appeal
8 therefrom is then pending, the Labor Commissioner may require
9 the employer to deposit a bond in such sum as the Labor
10 Commissioner may deem sufficient and adequate in the
11 circumstances, to be approved by the Labor Commissioner. The
12 bond shall be payable to the Labor Commissioner and shall be
13 conditioned that the employer shall, for a definite future period,
14 not exceeding two years, pay the employees in accordance with
15 the provisions of this article, and shall be further conditioned upon
16 the payment by the employer of any judgment which may be
17 recovered against the employer pursuant to the provisions of this
18 article.

19 (b) If an order to post a bond issued against an employer under
20 this section remains unsatisfied for a period of 10 days after the
21 time to appeal therefrom has expired, and no appeal from the order
22 is then pending, the Labor Commissioner may require the employer
23 to provide an accounting of assets of the employer, including a list
24 of all bank accounts, accounts receivable, personal property, real
25 property, automobiles or other vehicles, and any other assets, in a
26 form and manner as prescribed by the Labor Commissioner. An
27 employer shall provide an amended accounting of assets, if ordered
28 by the Labor Commissioner to do so. If, within 10 days after a
29 demand for an accounting of assets, made by certified or registered
30 mail, the employer fails to provide an accounting, or if the
31 employer fails to provide an amended accounting after receiving
32 a demand by the Labor Commissioner to do so, the Labor
33 Commissioner may bring an action in the name and on behalf of
34 the people of the State of California against such employer to
35 compel the employer to furnish the accounting. An employer who
36 fails to provide an accounting as required by this subdivision shall
37 be subject to a civil penalty not to exceed ten thousand dollars
38 (\$10,000).

39 (c) If, within 10 days after demand for the bond, which demand
40 may be made by mail, the employer fails to deposit the bond, the

1 Labor Commissioner may bring an action in the name and on
2 behalf of the people of the State of California against the employer
3 in a court of competent jurisdiction to compel the employer to
4 furnish the bond or to cease doing business until the employer has
5 done so. The employer has the burden of proving either that the
6 bond is unnecessary or that the amount demanded is excessive. If
7 the court finds that there is just cause for requiring the bond, and
8 that the bond is reasonably necessary or proper to secure prompt
9 payment of the wages of the employees of the employer and the
10 employer's compliance with the provisions of this article, the court
11 may enjoin the employer, whether an individual, partnership,
12 corporation, company, trust, or association, and such other person
13 or persons as may have been or may be concerned with or in any
14 way participating in the failure to pay the wages resulting in the
15 conviction or in the judgment, from doing business until the
16 requirement is met, and make other and further orders appropriate
17 to compel compliance with the requirement.

18 SEC. 5. Section 243 of the Labor Code is amended to read:

19 243. (a) If, within 10 years of either a conviction for a violation
20 of this article or failing to satisfy a judgment for nonpayment of
21 wages, or of both, it is alleged that an employer on a second
22 occasion has been convicted of again violating this article or is
23 failing to satisfy a judgment for nonpayment of wages, an employee
24 or the employee's legal representative, an attorney licensed to
25 practice law in this state, may, on behalf of himself or herself and
26 others, bring an action in a court of competent jurisdiction for a
27 temporary restraining order prohibiting the employer from doing
28 business in this state unless the employer deposits with the court
29 a bond to secure compliance by the employer with this article or
30 to satisfy the judgment for nonpayment of wages.

31 (b) Upon the filing of an affidavit that, to the satisfaction of the
32 court, shows reasonable proof that an employer, for the second
33 time within 10 years, has been convicted of violating this article
34 or has failed to satisfy a judgment for the nonpayment of wages,
35 or both, the court may grant an order that prohibits the employer
36 within 30 days from conducting any business within the state unless
37 the employer deposits a bond payable to the Labor Commissioner,
38 with the condition that the employer make wage payments in
39 accordance with this article, or that the employer pay any
40 unsatisfied judgment for nonpayment of wages, or both. The court

1 shall order that the bond be on deposit with the Labor
2 Commissioner at all times within a five-year period from the date
3 of the order, that the employer employs more than 10 employees.
4 The court shall order that the bond be in an amount equal to
5 twenty-five thousand dollars (\$25,000) or 25 percent of the weekly
6 gross payroll of the employer at the time of the posting of the bond,
7 whichever is greater, and that the term of the bond be for the
8 duration of the service of the employee who brought the action,
9 until past due wages have been paid, or until satisfaction of all
10 judgments for nonpayment of wages. The bond shall also be
11 payable for wages, interest on wages and for any damages arising
12 from any violation of orders of the Industrial Welfare Commission,
13 and for any other monetary relief awarded to an employee as a
14 result of a violation of this code. To aid in the enforcement of this
15 section, upon a request by the Labor Commissioner or an employee
16 bringing an action pursuant to this section, the court may
17 additionally require the employer to provide an accounting of
18 assets of the employer, including a list of all bank accounts,
19 accounts receivable, personal property, real property, automobiles
20 or other vehicles, and any other assets, in a form and manner as
21 prescribed by the court. An employer shall provide an amended
22 accounting of assets if ordered by the court to do so. If, within 10
23 days after a demand for an accounting of assets, which demand
24 may be made by certified or registered mail, the employer shall
25 fail to provide an accounting, or if the employer fails to provide
26 an amended accounting being ordered to do so, the court may take
27 all appropriate action to enforce its order, including the imposition
28 of appropriate sanctions.

29 (c) For purposes of subdivision (b), an employer shall be deemed
30 to have been convicted of having violated this article or to have
31 failed to satisfy a judgment for the second time within 10 years if,
32 to secure labor or personal services in connection with his or her
33 business, the employer uses the services of an agent, contractor,
34 or subcontractor who is convicted of a violation of this article or
35 fails to satisfy a judgment for wages respecting those employees,
36 or both, but only if the employer had actual knowledge of the
37 person's failure to pay wages. In issuing a temporary restraining
38 order pursuant to this section, the court, in determining the amount
39 and term of the bond, shall count the agent's, contractor's, or
40 subcontractor's employees as part of the employer's total

1 workforce. This subdivision shall not apply where a temporary
2 restraining order against the agent, contractor, or subcontractor as
3 an employer has been issued pursuant to subdivision (b).

4 (d) An employer who, for the third time within 10 years of the
5 first occurrence, is alleged to have violated this article or to have
6 failed to satisfy a judgment for nonpayment of wages, or both,
7 shall be deemed by the court to have commenced a new five-year
8 period for which the posting of a bond may be ordered in
9 accordance with subdivision (b), except that the court may, in its
10 discretion, require the posting of a bond in a greater amount as it
11 determines appropriate under the circumstances.

12 (e) A former employee who was a party to an earlier action
13 against an employer in which a judgment for the payment of wages
14 was obtained, and who alleges that the employer has failed to
15 satisfy the judgment for the payment of wages, in addition to any
16 other available remedy, may petition the court pursuant to
17 subdivision (b) for a temporary restraining order against the
18 employer to cease doing business in this state unless the employer
19 posts a bond with the court.

20 (f) Actions brought pursuant to this section shall be set for trial
21 at the earliest possible date, and shall take precedence over all
22 other cases, except older matters of the same character and matters
23 to which special precedence may be given by law.

24 (g) Nothing in this section shall be construed to impose any
25 mandatory duties on the Labor Commissioner.

26 SEC. 6. Section 1174 of the Labor Code is amended to read:

27 1174. Every person employing labor in this state shall:

28 (a) Furnish to the commission, at its request, reports or
29 information that the commission requires to carry out this chapter.
30 The reports and information shall be verified if required by the
31 commission or any member thereof.

32 (b) Allow any member of the commission or the employees of
33 the Division of Labor Standards Enforcement free access to the
34 place of business or employment of the person to secure any
35 information or make any investigation that they are authorized by
36 this chapter to ascertain or make. The commission may inspect or
37 make excerpts, relating to the employment of employees, from the
38 books, reports, contracts, payrolls, documents, or papers of the
39 person.

1 (c) Keep a record showing the names and addresses of all
2 employees employed and the ages of all minors.

3 (d) Keep, at a central location in the state or at the plants or
4 establishments at which employees are employed, payroll records
5 showing the hours worked daily by and the wages paid to, and the
6 number of piece-rate units earned by and any applicable piece rate
7 paid to, employees employed at the respective plants or
8 establishments. These records shall be kept in accordance with
9 rules established for this purpose by the commission, but in any
10 case shall be kept on file for not less than three years. An employer
11 shall not prohibit an employee from maintaining a personal record
12 of hours worked, or, if paid on a piece-rate basis, piece-rate units
13 earned.

14 SEC. 7. Section 1194.3 is added to the Labor Code, to read:

15 1194.3. An employee may recover attorney's fees and costs
16 incurred to enforce a court judgment for unpaid wages due pursuant
17 to this code.

18 SEC. 8. Section 1197.2 is added to the Labor Code, to read:

19 1197.2. (a) In addition to any other penalty imposed by law,
20 an employer who willfully violates provisions of this code or orders
21 of the Industrial Welfare Commission requiring payment of the
22 legal minimum wage or the legal overtime compensation applicable
23 to an employee shall be guilty of a misdemeanor ~~if~~. *If* the total
24 amount of unpaid wages is less than one thousand dollars (\$1,000),
25 ~~and~~, upon conviction therefor, *the employer* shall be fined not less
26 than one thousand dollars (\$1,000) nor more than ten thousand
27 dollars (\$10,000) or imprisoned in the county jail for not more
28 than six months, or both the fine and imprisonment, ~~and, if for~~
29 *each offense. If* the total amount of unpaid wages is more than one
30 thousand dollars (\$1,000), ~~shall be guilty of a felony and~~, upon
31 conviction therefor, *the employer* shall be fined not less than ten
32 thousand dollars (\$10,000) nor more than twenty thousand dollars
33 (\$20,000), or imprisoned in the state prison for 16 months, or two
34 ~~or three years~~ *county jail for not less than six months, nor more*
35 *than one year*, or both the fine and imprisonment, for each offense.
36 If there are multiple violations of this code or orders of the
37 Industrial Welfare Commission involving more than one employee,
38 the total amount of unpaid wages owed to all employees shall be
39 aggregated together for purposes of determining whether an offense

1 ~~is a misdemeanor or a felony~~ *the level of fine and the term of*
2 *imprisonment.*

3 (b) In addition to any other penalty imposed by law, an employer
4 who willfully fails to pay and has the ability to pay a final court
5 judgment or final order issued by the Labor Commissioner for all
6 wages due to an employee who has been discharged or who has
7 quit within 90 days of the date that the judgment was entered or
8 the order became final is guilty of a misdemeanor ~~if~~. *If* the total
9 amount of wages due is less than one thousand dollars (\$1,000),
10 ~~and, upon conviction therefor, the employer shall be fined not less~~
11 ~~than one thousand dollars (\$1,000) nor more than ten thousand~~
12 ~~dollars (\$10,000) or imprisoned in the county jail for not more~~
13 ~~than six months, or both, for each offense. If~~ and, if the total amount
14 of wages due is more than one thousand dollars (\$1,000), ~~shall be~~
15 ~~guilty of a felony, and upon conviction therefor, the employer shall~~
16 ~~be fined not less than ten thousand dollars (\$10,000) nor more than~~
17 ~~twenty thousand dollars (\$20,000), or imprisoned in the state prison~~
18 ~~for 16 months, or two or three years county jail for not less than~~
19 ~~six months, nor more than one year, or both the fine and~~
20 ~~imprisonment, for each offense. If there are multiple failures to~~
21 ~~pay wages involving more than one employee, the total amount~~
22 ~~of wages due to all employees shall be aggregated together for~~
23 ~~purposes of determining whether an offense is a misdemeanor or~~
24 ~~a felony the level of fine and the term of imprisonment.~~

25 (c) As used in this section, “willfully” has the same meaning as
26 provided in Section 7 of the Penal Code.

27 (d) An employer or other person guilty of a misdemeanor ~~or~~
28 ~~felony~~ under subdivision (a) or (b) shall pay, in addition to any
29 criminal fines, restitution to the aggrieved employee or employees
30 in an amount equal to the total amount of unpaid wages.

31 SEC. 9. Section 1206 is added to the Labor Code, to read:

32 1206. Notwithstanding any other provision of law, this code
33 establishes minimum penalties for failure to comply with
34 wage-related statutes and regulations.

35 SEC. 10. Section 2811 is added to the Labor Code, to read:

36 2811. (a) (1) At the time of hiring, an employer shall provide
37 each employee, in writing in English and in the language identified
38 by the employee as his or her ~~the~~ primary language, a notice
39 containing the following information:

1 (A) The rate or rates of pay and basis thereof, whether paid by
2 the hour, shift, day, week, salary, piece, commission, or otherwise
3 including any rates for overtime, as applicable.

4 (B) Allowances, if any, claimed as part of the minimum wage,
5 including meal or lodging allowances.

6 (C) The regular payday designated by the employer in
7 accordance with the requirements of this code.

8 (D) The name of the employer, including any “doing business
9 as” names used by the employer.

10 (E) The physical address of the employer’s main office or
11 principal place of business, and a mailing address, if different.

12 (F) The telephone number of the employer.

13 (G) Any other information the Labor Commissioner deems
14 material and necessary.

15 ~~(2) When providing the notice to an employee, the employer~~
16 ~~shall obtain from the employee a signed and dated~~
17 ~~acknowledgment, in English and in the primary language of the~~
18 ~~employee, of receipt of the notice, which the employer shall~~
19 ~~preserve and maintain for three years. The acknowledgment shall~~
20 ~~include an affirmation by the employee that the employee~~
21 ~~accurately identified his or her primary language to the employer,~~
22 ~~and that the notice provided by the employer to the employee was~~
23 ~~in the language so identified, and shall conform to any additional~~
24 ~~requirements established by the Labor Commissioner with regard~~
25 ~~to content and form.~~

26 ~~(3)~~

27 (2) The Labor Commissioner shall prepare templates that comply
28 with the requirements of ~~paragraphs (1) and (2)~~ *paragraph (1)*.
29 Each template shall be in English and one additional language.
30 The Labor Commissioner shall determine, in his or her discretion,
31 which languages to provide in addition to English, based on the
32 size of the state population that speaks each language and any other
33 factor that the Labor Commissioner shall deem relevant. All
34 templates shall be made available to employers in such manner as
35 determined by the Labor Commissioner.

36 ~~(4)~~

37 (3) When an employee identifies as his or her primary language
38 a language for which a template is not available from the Labor
39 Commissioner, the employer may comply with this subdivision

1 by providing the employee an English-language notice or
2 acknowledgment.

3 ~~(5)~~

4 (4) An employer shall not be penalized for errors or omissions
5 in the non-English portions of any notice provided by the Labor
6 Commissioner.

7 (b) An employer shall notify his or her employees in writing of
8 any changes to the information set forth in the notice, or in the
9 terms or conditions of employment, within seven calendar days
10 after the time of the changes, unless all changes are reflected on
11 the wage statement furnished in accordance with Section 226.

12 (c) *For purposes of this section, “employee” does not include*
13 *any of the following:*

14 (1) *An employee directly employed by the state or any political*
15 *subdivision thereof, including any city, county, city and county,*
16 *or special district.*

17 (2) *An employee who is exempt from the payment of overtime*
18 *wages by statute or the wage orders of the Industrial Welfare*
19 *Commission.*

20 (3) *An employee who is covered by a valid collective bargaining*
21 *agreement if the agreement expressly provides for the wages, hours*
22 *of work, and working conditions of the employee, and if the*
23 *agreement provides premium wage rates for all overtime hours*
24 *worked and a regular hourly rate of pay for those employees of*
25 *not less than 30 percent more than the state minimum wage.*

26 SEC. 11. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.